

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4700-04
Bill No.: Truly Agreed to and Finally Passed CCS for SCS for HB 1548
Subject: Administration, Office of; State Departments; State Employees
Type: Original
Date: June 2, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General Revenue*	\$0	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund	\$0	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Various*	\$0	(Unknown)	(Unknown)
Total Estimated Net Effect on Other State Funds	\$0	(Unknown)	(Unknown)

*** Could Exceed \$100,000 in any given fiscal year.**

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 14 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Various*	\$0	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	(Unknown)	(Unknown)

* Could Exceed \$100,000 in any given fiscal year.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials with the **Department of Corrections (DOC)** assume provisions within the bill outline that compensatory time payouts should occur in the quarter subsequent to the quarter in which the payout was requested in writing by the employee.

In addition, to the above provisions, annual overtime payouts will begin on January 1, 2006 to pay off comp time accrued in the previous year unless the employee requests to retain their balance which is allowed up to a maximum of 80 hours.

The DOC assumes the potential fiscal impact due to passage of this bill is Unknown but expected to exceed \$100,000 annually due to the fact that it cannot be estimated how many employees may request the payoff to 0 hours who may have taken compensatory time off duty prior to passage of this bill.

Officials from the **Department of Natural Resources (DNR)** assume the bill requires DNR to pay non-exempt state employees that have accrued overtime compensation upon request. The non-exempt state employee must notify the department in writing and state the number of hours, no less than twenty, for which payment is desired. The department shall pay the non-exempt

ASSUMPTION (continued)

employee within the calendar quarter following the quarter in which a valid request is made. The DNR estimates the proposed bill may cost the department \$396,570 in the first year and then \$313,446 annually thereafter.

Additionally, effective July 1, 2005 by November first of each year, the department would be required to notify the Commissioner of Administration, the House Budget Chair and the Senate Appropriations Committee Chair of the amount of overtime paid in the previous fiscal year and an estimate of overtime to be paid in the current fiscal year. The fiscal year estimate for overtime pay to be paid by each department shall be designated as a separate line item in the appropriations bill for that department.

Finally, on a quarterly basis, the department would be required to report to the House of Representatives Budget Committee Chair, the Senate Appropriations Committee Chair and the Commissioner of Administration the cumulative number of accrued overtime hours for department employees, the dollar equivalent of such overtime hours, the number of authorized full-time equivalent positions and vacant positions, the amount of funds for any vacant position which will be used to pay overtime compensation for employees with full-time equivalent positions, and the current balance in the department's personal service fund.

Officials from the **Department of Conservation** estimate this proposal, provided the Commission decides that non-exempt and/or exempt compensatory balances should be paid off, would result in an initial payment of approximately \$1,157,000, then approximately \$972,000 annually thereafter. There will also be additional administrative cost with the exact fiscal impact unknown.

In a similar proposal in 2003 (HB 134), officials from the **Department of Economic Development – excluding the Public Service Commission (DED)** assume the impact of this proposal would be unknown and would depend on whether management allowed overtime to be worked. DED assumes the cost to be zero to unknown and defers to the cost calculated by the Office of Administration – Division of Personnel.

Officials from the **Department of Economic Development – Public Service Commission** assume state employees will continue to earn compensatory time at the current rates as defined in CSR 20-5.010. The estimated annual fiscal impact was arrived at by totaling the number of overtime hours worked during the period July 1, 2003 through December 31, 2003, and calculating the associated dollar value. An assumption is that with the current case load, the amount of overtime will continue at a similar rate throughout the upcoming months as is necessary to meet deadlines.

ASSUMPTION (continued)

The dollar value of overtime worked during the period beginning July 2003 through and ending December 2003 is approximately \$23,400. It follows that an annual fiscal year impact can be estimated as follows: FY04 \$46,800; FY05 \$47,970; FY06 \$49,169; FY07 \$50,398.

Officials from the **Department of Health and Senior Services (DOH)** estimate the proposal would cost their agency \$26,657 in FY 2005. General Revenue, federal funds, and “other funds” would be impacted. DOH notes the long range implications of the proposal could result in supervisors and manager prohibiting the use of overtime which would result in some work not being done in a timely manner. Alternatively some work which is required would result in overtime and the unit would have to use existing resources to pay for this, resulting in some positions not being filled.

Officials from the **Department of Higher Education (DHE)** assume the fiscal impact of this proposal is unknown because the total impact depends on whether eligible employees choose to receive overtime payment in lieu of compensatory time. DHE notes the total number of hours greater than 40 worked by qualifying employees is unknown. DHE states if qualifying employees choose to receive payment in lieu of compensatory time there could be considerable cost to the department.

Officials from the **Department of Insurance (MDI)** assume the bill would require non-exempt state employees to be paid for accrued overtime. MDI has very limited overtime and anticipates that the bill will have little fiscal impact.

Officials from the **Department of Labor and Industrial Relations (DOL)** assume the cost to be \$5,672 in state funds and \$14,679 in federal funds for FY 2006 and \$5,815 in state funds and \$15,046 in federal funds for FY 2007 and was allocated to department funds based on that fund's total payroll.

Officials from the **Department of Mental Health (DMH)** note their employees earn a significant amount of overtime annually. DMH shows total overtime earned for a 3-year comparison:

FYE 06/30/00 = \$14,623,588
FYE 06/30/01 = \$13,897,573
FYE 06/30/02 = \$11,160,975

DMH notes, historically, its facilities have not received funding to pay off overtime. Overtime pay was accumulated through personal service variance from vacant positions waiting to be

ASSUMPTION (continued)

filled. If the variance would not cover the full cost of overtime, facilities would be unable to fill much needed positions to accumulate enough funding to ensure compliance with this legislation.

Employees at facilities have limited opportunity to take time off, instead of being paid the compensatory time, because of having to maintain appropriate staffing levels. Requiring the payoff of overtime based on a calendar year and not on a fiscal year (the payment of overtime at January 1), will put an enormous strain on facility personal service budgets. DMH assumes the fiscal impact is unknown, but would be over \$100,000.

Officials from the **Department of Public Safety (DPS)** assume the cost of this proposal is unknown due to factors than can occur in Water Patrol or Highway Patrol which could cause overtime to be worked. Also, the exact amount paid would vary per fiscal year. The DPS would not be able to comply with this bill should the additional funding not be appropriate or perhaps appropriated but then later withheld.

Officials from the **Department of Revenue (DOR)** assume this proposal would result in a fiscal impact to their agency.

Officials from the **Department of Social Services (DSS)** assume since it is not possible to determine how many employees would request payment versus use of overtime, the estimate was prepared assuming that all employees would request payment. The FY06 cost was arrived at by taking data on all current DSS employees with compensatory time balances and calculating the actual cost to pay their overtime balance. In addition to the payoff, the cost for continuing to pay the compensatory time was included for the remainder of the fiscal year. The payoff is estimated at \$2,021,792 while the funds to continue to pay are \$1,678,140 (based on six months of overtime at an average monthly cost of \$279,690). The average monthly estimate was arrived at by identifying the actual amount and cost of compensatory time earned by DSS employeeed during July 2002 through June 2003. This same monthly average was used to project the cost for FY07.

Also, it should be noted that the requirement in Section 105.935(2) that employees be given the choice of "equal compensatory time off duty" or cash payment a the employee's straight time, may actually increase costs above that incurred now for personal services expenditures on a state holiday. The reason being is that often supervisors flex an employee's schedule in the same workweek as the holiday to prevent the employee from incurring additional overtime. This language would require DSS to give the employee choice which could lead to increased cost. However, the actual cost cannot be estimated since DSS is unable to determine how many people would choose this option.

ASSUMPTION (continued)

Officials from the **Department of Transportation (DOT)** assume Section 105.055 revises laws on state employee reporting of alleged violations. Current law provides that state agencies and state supervisors shall not prohibit state employees from discussing the operations of the agency with any member of the legislature or the state auditor. This section adds the Attorney General or any state official or body to the list. This expansion will likely increase the number of administrative appeals filed under section 105.055. This change would have a fiscal impact on MoDOT.

Section 105.055 allows employees alleging violations the right to bring a civil action for damages in circuit court. Presently, administrative review is available and only on appeal of the administrative decision does an employee have the right to go to court. This bill makes no mention of any requirement of exhaustion of administrative remedies prior to being within the jurisdiction of the circuit court. It also appears to allow employees to proceed at the administrative level, in circuit court or both simultaneously. An additional cause of action under 105.055 is added by giving employees a civil cause of action in circuit court that currently does not exist. This would create additional litigation for MoDOT and would have a fiscal impact on the department due to increased legal expenses.

Section 105.055 also provides that the proper venue for an action under lies in the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides. Currently the proper venue for such a suit is Cole County (legal residence of the department). This change would create additional costs in travel expenses resulting in a fiscal impact on MoDOT.

Section 105.055 will have a negative fiscal impact on MoDOT. Since the potential number of court cases cannot be predicted nor their locations, the fiscal impact is unknown.

MoDOT makes the following assumptions when arriving at the fiscal impact of this bill: (1) Section 105.935.3 of the proposal only applies to nonexempt state employees and (2) MoDOT assumes that the fringe benefits associated with the payment for compensatory time would also have to be paid (53.88%). This legislation does not address the hours that were earned but not paid prior to calendar year 2005. If MoDOT is required to pay for these hours, the total fiscal impact would increase. The negative fiscal impact of this legislation is unknown, however, the estimated total dollars for nonexempt employees in CY03 was approximately \$802,000 (CY03 balance of nonexempt compensatory time 52,281 hours X \$15.35 average hourly rate = \$802,513.35). The impact is unknown due to the differences in salary and the number of hours earned in excess of 80 per employee.

ASSUMPTION (continued)

The total negative fiscal impact of this legislation is unknown.

Officials with the **Department of Agriculture** assume the cost may increase due to needs of department and additional hours being worked or decrease due to compensatory time usage. The assumption was made that all eligible (non-exempt under FLSA) employees would elect to have all compensatory time paid rather than elect to maintain a balance of up to 80 hours. The total cost in FY07 would be \$62,219.

Officials from the **Office of Administration - Division of Budget and Planning** assume the proposal should not result in additional costs or savings to the agency.

Officials from the **Office of Administration - Commissioner's Office** assume there would be no fiscal impact to their agency.

Officials from the **Office of Administration** assume the proposal would appear to provide more of an incentive for employees to work overtime if they can receive payment for the time worked. To pay overtime quarterly would require an appropriation for agencies, or could result in personnel service expenditures early in the year that would leave the agency short of funds by the end of the fiscal year.

In response to a similar proposal (HB 1061), officials from the **Office of Administration - Division of Personnel** are estimating the statewide cost of this proposed legislation, based on the amount of comp time that was earned during calendar year 2003.

Section 2: "A state employee shall be paid at a rate of one and one-half times the employee's straight time hourly rate for all time worked in excess of forty hours a week." For most employees, this is maintained as a federal comp time balance in the payroll system. To estimate the cost of hours worked in excess of 40 in a week, we extracted the number of comp time hours earned, and calculated an estimate of the value of that comp time. There were 1,519,438 hours of non-exempt comp time earned for working more than 40 hours in a week. These comp time hours include the premium at time and one-half. The estimated potential cost of paying Federal comp time is \$18,557,783.

Section 2: "Any state employee who works on a designated holiday, shall be granted equal compensatory time off duty or shall receive, at his or her choice, the employee's straight time hourly rate in cash payment." There were 1,185,243 hours of holiday comp time banked. These comp time hours are banked at straight time. The estimated (non-exempt) cost of paying this

ASSUMPTION (continued)

comp time, is \$13,384,912.

Here are the total hours of non-exempt Federal and Holiday overtime that could have been earned and paid in CY 2003.

	Hours	Estimated Cost
Federal Comp Time	1,519,438	\$18,557,783
Holiday Comp Time	1,185,243	\$13,384,912
Total Estimated Hours Earned	2,704,681	\$31,942,695

This estimate is not provided by fund. According to the FY 2004 personal services budget, general revenue is comprised 51.2% from GR and 48.8% from Federal and Other Funds.

The above figures assume that all of the Federal overtime and Holiday overtime earned would be paid. As such, it would provide the maximum possible estimate for Section 2, that is if all employees chose to be paid for Federal overtime and time worked on a holiday.

In CY 2003 the following total number of comp time hours were paid:

	Hours	Estimated Cost
Total Estimated Hours Earned	2,704,681	\$31,942,695
LESS: Total Estimated Hours Paid*	-1,418,558	-\$16,609,525
Total Estimated Hours of Comp Time Remaining	1,286,123	\$15,333,170

Assuming all employees who earn comp time would want to receive payment for working overtime as opposed to using the comp time, the amount of comp time earned that could be paid is \$15,333,170.

* Some of the comp time paid in CY 2003 was earned prior to CY 2003. Employees who earned comp time previously resign and are paid for comp time. An employee may have used more comp time in CY 2003, than they earned in CY 2003. As a result, the estimated hours paid in CY 2003 may be somewhat less.

The calculation of this estimate is further complicated by the wording "up to a total of 80 compensatory time hours." Employees may have "state" comp time on the books that do not fall into either category mentioned in the proposed legislation. State comp time is earned when an FLSA non-exempt employee has greater than 40 hours paid in a work week, or when an FLSA exempt employee is provided comp time for hours worked in excess of 40 in a work week. State comp time hours have not been included in this estimate.

ASSUMPTION (continued)

Benefits That Increase With Salary Percentage Calculation

Also, please see my note on the calculation of benefits associated with this cost below. I changed the estimated cost in the fiscal note work sheet to reflect only benefits that increase with salary. For example, paying overtime for an employee would not increase the amount the state contributes to health care, life insurance or deferred comp. However, other benefits amounting to 18.78% of salary would be paid as overtime pay is generated.

Benefit	Percentage	
	Increase	Do Not Increase
Retirement	9.35%	
Social Security		
OASDI	6.20%	
Medicare	1.45%	
Health Insurance		\$471.00
Life Insurance		\$8.72
Long Term Disability	0.57%	
Worker's Comp & Unemployment	1.21%	
Deferred Compensation*		\$25.00
Totals	18.78%	\$504.72

Also, in a similar proposal in 2003 (HB 134), officials from the **Office of Administration – Division of Personnel (OA)** assume the proposal would result in cost of at least \$6.7 million to \$16.8 million annually with approximately 52% of the cost being paid out of General Revenue. This cost estimate includes 18.26% for fringe benefits. OA estimates the statewide cost of this proposal based on the amount of compensatory time earned during fiscal year 2002. OA provided the following estimate:

<u>Description</u>	<u>Value of Overtime</u>	
Total Estimated OT Earned in a Year	\$33,281,000	
Less: Overtime Used or Paid	\$16,445,000	
Total Earned and Not Used or Paid	\$16,836,000	Potential Fiscal Impact if Comp Time Must be Paid
Less: Value of Balances Over 80 Hours	\$6,700,000	Must Be Paid (Would increase the cost to the state)
Remaining Balances Less Than 80 Hours	\$10,136,000	Could be paid or banked -- employee's choice (Could increase the cost to the state)

ASSUMPTION (continued)

Oversight assumes this proposal applies only to those non-exempt employees.

Oversight cannot determine how many state employees would be classified as non-exempt throughout the scope of this fiscal note period. Therefore, **Oversight** is indicating the cost to be in excess of \$100,000 in any given fiscal year.

In a similar proposal in 2003 (HB 134), **Oversight** obtained a spreadsheet, prepared by Budget and Planning, which shows the percentage of FY 2003 Personal Service charged to General Revenue and Federal and Other Funds. According to this spreadsheet, 51.9% of personal service costs are charged to General Revenue and 48.1% are charged to Federal and Other funds.

<u>FISCAL IMPACT - State Government</u>	FY 2005	FY 2006 (6 Mo.)	FY 2007
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GENERAL REVENUE

Cost – Various State Agencies

		<u>(Could</u> <u>Exceed</u>	<u>(Could</u> <u>Exceed</u>
Payoff of Overtime	<u>\$0</u>	<u>\$100,000)</u>	<u>\$100,000)</u>

VARIOUS OTHER STATE FUNDS

Cost – Various State Agencies

		<u>(Could</u> <u>Exceed</u>	<u>(Could</u> <u>Exceed</u>
Payoff of Overtime	<u>\$0</u>	<u>\$100,000)</u>	<u>\$100,000)</u>

FEDERAL FUNDS

Cost – Various State Agencies

		<u>(Could</u> <u>Exceed</u>	<u>(Could</u> <u>Exceed</u>
Payoff of Overtime	<u>\$0</u>	<u>\$100,000)</u>	<u>\$100,000)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2005	FY 2006 (6 Mo.)	FY 2007
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This bill allows any state employee to discuss the operations of an agency with any member of the legislature, State Auditor, Attorney General, or any state official or body charged with investigating alleged misconduct. A supervisor or appointing authority cannot take disciplinary action unless the employee knowingly provided false, confidential, or information regarding the employee's own wrong doing. If disciplinary action was taken against the employee in violation of this section, the employee can file for an administrative appeal within 30 days of the alleged violation or can bring civil action for damages caused within 90 days after the occurrence of the alleged violation.

Nonexempt state employees pursuant to the Fair Labor Standards Act must be paid for overtime. Overtime will be paid unless the employee chooses to use accrued overtime hours as compensatory time if leave time is available and the employee's supervisor agrees. Any nonexempt state employee who works on a state holiday will have the option of receiving either equal compensatory time off or payment at the straight hourly rate.

Any state employee requesting cash payment for at least 20 hours of accrued overtime is to be compensated within 30 calendar days of the request.

Beginning on January 1, 2006, and annually thereafter, each department must pay nonexempt state employees in full for any overtime hours accrued during the previous calendar year not yet paid or used in the form of compensatory time. Nonexempt state employees may retain up to 80 hours of compensatory time.

By November of each year, every department must notify the Commissioner of the Office of Administration, the House Budget Chairman, and the Senate Appropriations Chairman of the amount of overtime paid in the previous year and an estimate of the overtime to be paid in the current fiscal year. The fiscal year estimate is to be a separate line item appropriation for each department in its appropriation bill.

Each department will report quarterly to the House Budget Chairman, the Senate Appropriations Chairman, and the Commissioner of the Office of Administration the cumulative number of accrued overtime hours for department employees and the corresponding dollar amount, the appropriated number of full-time equivalent positions listing vacant positions, the amount of

DESCRIPTION (continued)

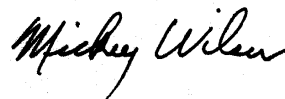
funds for any vacant positions used to pay overtime compensation, and the current balance in the department's personal service fund.

The bill also changes the title of hearing officers at the Missouri Public Service Commission to administrative law judges.

This proposal is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration – Division of Personnel
Department of Transportation
Department of Conservation
Department of Labor and Industrial Relations
Department of Higher Education
Department of Economic Development
Department of Economic Development – Public Service Commission
Department of Elementary and Secondary Education
Department of Mental Health
Department of Health and Senior Services
Department of Revenue
Department of Public Safety
Department of Insurance
Department of Agriculture
Department of Social Services



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